THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

&

THE HON'BLE SRI JUSTICE B. SESHASAYANA REDDY

WP No.1410 OF 2004

13-12-2007

Om Prakash Singh

..... Petitioners

AND

M. Lingamaiah & Another

..... Respondents

THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

&

THE HON'BLE SRI JUSTICE B. SESHASAYANA REDDY

WP No.1410 OF 2004

ORAL ORDER: : (per Sri GM,J)

This Writ Petition has been filed seeking Writ of Certiorari calling for the records in LGC Sr.No.442 of 2002 on the file of the Special Court under A.P. Land Grabbing (Prohibition) Act, 1982 and to declare the orders passed in LGC (Sr.) No.442 of 2003 dated 4.11.2002 as illegal, arbitrary and unlawful.

The writ petitioner herein filed LGC before the Special Court under A.P. Land Grabbing (Prohibition)Act, (for short " the Special Court"), seeking to declare the respondents as land grabbers, to deliver possession of the land grabbed by them and to prosecute and punish the respondents as per Sections 3 and 4 of the A.P. Land Grabbing (Prohibition) Act, 1982 (for short "the Act").

The writ petitioner claims that he is the natural brother and also member of the joint family consisting of late Ram Katin Singh and himself, who are the sons of late Suresh Singh. Late

Ram Katin Singh, who was the Kartha of the Hindu Joint Family purchased the scheduled properties with joint family funds through registered sale deeds bearing document Nos. 4132/1967 and 5229/1967. His natural brother, Ram Katin Sigh had expired on 22-2-1978, as he is a bachelor his half share was also devolved on the writ petitioner as legal heir of late Ram Katin Singh. After the death of his natural brother, as the writ petitioner has been residing in Uttar Pradesh State, and he requested his relatives in Hyderabad to look after the said lands.

The writ petitioner further states that that he came to Hyderabad in connection with the death of his relative on 10-10-2000 and visited the schedule land, and came to know that the respondents 1 and 2 have created documents of transfer in their favour duty resorting to forgery of signatures of late Ram Katin Singh, who has expired in the year 1978. Therefore, the writ petitioner approached the concerned Sub-Registrar's office and came to know that M. Lingaiah and M.V. Bhaskar Reddy had got themselves involved in this manipulation, creation and fabrication of sale deeds of the years 1980 and 1983 showing Ram Katin Singh was alive as on the date of sale deeds and got arranged the transfer of the application schedule land by impersonating the signature of late Ram Katin Singh, who was no more as on the date of execution of the sale deeds.

The writ petitioner further states that he had issued legal notice dated 23-11-2000 to which the respondents gave a reply

on 14-12-2000 stating that the respondent no.1 was the owner of the petition schedule property and he alienated the same in favour of the respondents 2 to 7.

The respondents filed counters denying the allegations.

After hearing both the counsel the Special Court inter alia came to the conclusion that the writ petitioner has to prove that the sale deeds executed in favour of the respondents by late Ram Katin Singh are brought into existence by manipulation, creation and fabrication, and therefore he has to initiate appropriate civil proceedings before the competent civil court. Furter, after establishing his right to the petition schedule property in a civil Court, the fact of land grabbing will come into picture, and accordingly, declined to take cognizance of the case. Hence, this Writ petition.

Learned counsel for the petitioner vehemently contended that the Act is a special enactment and keeping in view the aims and objects, the Special Court ought to have taken the cognizance of the case. Learned counsel relying on section 9 of the Act further submitted that out of the joint family funds, petitioner and his brother late Ram Katin Singh purchased the petition schedule properties; that the Special Court is competent to go into those questions and that the civil court jurisdiction is not a bar to take cognizance of the case by the Special Court, as the Special Court is having civil and criminal jurisdiction. In support of his contentions learned counsel relied on the decision reported in MAHALAXMI MOTORS v. MANDAL

REVENUE OFFICER ((1) 2007 (12) scale 40), A.P. HOUSING BOARD v. MOHD. SADATULLAH AND OTHERS ((2) 2007 (6) Supreme Court Cases 566). There is no dispute with regard to propositions laid down in those decisions.

Section 9 of the Act reads as follows:

> **“ Special Court to have the powers of the Civil Court and the Court of Sessions** : - Save as expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908, the Andhra Pradesh Civil Courts Act, 1972 and the Code of Criminal Procedure, 1973, in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purposes of the provisions of the said enactments, Special Court shall be deemed to be a Civil Court, or as the case may be, a Court of sessions and shall have all the powers of a Civil Court and a Court of session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.”

In MAHALAXMI MOTORS’s case (1 supra), it was held by the Apex Court as follows :

> “ …. The Bench in Konda Lakshmana Bapuji (

> supra) has applied both the broader and narrow meanings of the said expression. It would not, however, mean that all the tests laid down therein are required to be satisfied to their letter and spirit. What is necessary to be proved is the substance of the allegation. The proof of intention on the part of a persons being his state of mind, the ingredients of the provisions must be considered keeping in view the materials on records as also circumstances attending thereto. What would be germane for lawful entitlement to remain in possession would be that if the procedee proves that he had bona fide claim over the land, in which event, it would be for him to establish the same. ”

In MOHAMMED SADATULLAH’s case (2 supra) it was inter alia held by the Supreme Court that the scheme of the Act is clear that it is a special legislation enacted with a view to deal with and decide cases of land grabbing expeditiously. In interpreting the provisions of the Act, the said objective of the legislature has always to be kept in view.

On the other hand, Sri D. Prakash Reddy, learned Senior Counsel appearing on behalf of the learned counsel for the respondents contends that the respondents are having registered sale deed on their favour way back in the year 1982

and that Ram Kathan Singh expired on 1978. Learned Senior Counsel relying on the concise statement filed by the petitioner (at pagraphs 14 and 15), contended that it is not within the purview and jurisdiction of the Special Court to take cognizance of the case, unless possession has been taken illegally. It is the contention of the learned senior counsel that there is a dispute of title, therefore, the petitioner has to file a suit for declaration stating that the sale deed is not binding and that allegation that they have no title etc., have to be gone into by the civil court. In support of his contention he has relied on the decision reported in GOUNI SATYA REDDI v. GOVERNMENT OF ANDHRA PRADESH ((3) 2004(7) SCC 398).

Section 2(e) of the Act reads as follows.

> " (e) "land grabbing" means every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such lands, or enter into or create illegal tenancies or lease and licences agreements or any other illegal agreements in respect of such lands, or to construct unauthorized structures thereon for sale or hire, or give such lands to any person

on rental or lease and licence basis for construction, or use and occupation, of unauthorized structures ; and the term " to grab land " shall be construed accordingly ; "

In GOUNI SATYA REDDI 's case (3 supra) it was held by the Apex Court as follows :

" From the definitions of the phrases "land grabber" and "land grabbing" contained in clauses (d) and (e) of Section 2 of the A.P. Land Grabbing (Prohibition) Act, 1982, it is clear that grabbing of any land must be without any lawful entitlement and with a view to take possession of such lands illegally. That is to say, the land grabber must be aware of the fact that he is entering into the possession illegally and without any lawful entitlement. Thus coupled with the fact of not being entitled to possession the person must enter into possession with a view to obtain illegal possession. Where such view of taking illegal possession is missing or lacking, a person would not be covered under the definition of the phrase or expression "land grabber". It is a necessary ingredient of land grabbing i.e. the person taking possession must know it that he is acting illegally while taking possession."

It is apt to refer to the relevant portions of the averments made in the concise statement which reads as follows :

> " 14. It is submitted that when once M. Lingamaiah or M. Vijaya Bhakar Reddy had no any right, claim or authority on the applicant's land of Acrs. 16.30 guntas in Sy. No.125, 126,126/A and 122/A which late Ram Katin Singh, the brother of the applicant had acquired the said property through registered sale deed bearing document no.4132 of 1967 and 5229 of 1967, which property was acquired by the sale consideration given by him from the joint family fund consisting of late Ram Katin Singh and the applicant herein.
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> 15. It is submitted that all the respondents had resorted to illegal, unlawful and mala fide acts of creation of documents on the client's land by resorting to forgery of the signatures of late Ram Katin Singh and fabrication of the sale deeds impersonating the dead person late Ram Katin Singh."

The averments made in the concise statement and the documents annexed, do not disclose that there is any allegation that the respondents unauthorisedly or unlawfully taken possession. In our considered opinion unless the averments/allegations made in the concise statement specify

and satisfy attracting the ingredients of section 2(d) and (e) of the Act, mere repetition of words of land grabbing would not be enough for taking cognizance of the case i.e. factum as well as the intention. In identical circumstances, the Full Bench of this Court in MOHD. SIDDIQ ALI KHAN v. SHAHSUN FINANCE LIMITED ((4) 2005 (2) ALT 503 (F.B.) has held as follows :

> " Unless the allegations made in the application satisfy and attract the ingredients of "land grabber" and "land grabbing " as provided for under Section 2(d) and (e) of the Act, mere repetition of words "land grabbing" would not be enough for taking cognizance of a case, unless that statement or allegations satisfies both the ingredients – the factum as well as the intention. Act of land grabbing involves "taking of any land belonging to Government etc., or any other private person unauthorisedly, unfairly, greedily, either forcibly, violently, unscrupulously or otherwise but without any lawful entitlement. Taking possession of the land without any lawful entitlement thereto is the sin qua non to hold a person to be a land grabber. It may be noted, to make out a case that a person is a land grabber the applicant must aver and prove both the ingredients – the factum as well as

> the intention. Unless a person unauthorisedly and without any lawful entitlement thereto enters or intrudes into a land forcibly or otherwise, he cannot be held to be a land grabber. The emphasis is on taking possession without any lawful entitlement."

Except saying in the concise statement that the documents are fabricated there is no specific allegation about illegally taking possession by the respondents. Having perused the concise statement and considering the facts and circumstances of the case, we are of the considered view that the special Court rightly found that it is not within its purview to take cognizance of the case.

It is needless to state that the applicant must aver that he was in possession all along or till a particular time in his own absolute right, title and interest and that he was dispossessed by the land grabbers in recent past without any right and title to the land in question. Absence of these mandatory details in regard to any of these aspects are fatal. The wider net of common law remedies are not to be roped in, remedy as provided under the Act takes in very briefer and conspicuous only as against such land grabbers sat within parameters as contemplated under the Act, as the general remedies under common law can take care of as the case requires an elaborate enquiry on a seriously contested rights.

For foregoing discussion, we do not see any merit in the

writ petition. The Writ Petition is accordingly dismissed. No costs.

Kk/cs

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GM, J

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BSSR, J

Dated : 13-12-2007

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